

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

NAUTILUS INSURANCE COMPANY,

Plaintiff

v.

MOTEL MANAGEMENT SERVICES
INC. d/b/a NESHAMINY INN, *et al.*,

Defendants

Civil Action No. 2:20-cv-1607-CMR

**NAUTILUS INSURANCE COMPANY ANSWER AND AFFIRMATIVE DEFENSES TO
DEFENDANTS MOTEL MANAGEMENT SERVICES, INC., D/B/A NESHAMINY INN,
MARY ETZRODT TRUST AND NI45 LLC'S COUNTERCLAIMS**

Plaintiff Nautilus Insurance Company ("Nautilus"), by and through its attorneys, White and Williams LLP, files this Answer to the Counterclaims of defendants Motel Management Services, Inc., d/b/a Neshaminy Inn, Mary Etzrodt Trust and NI45LLC's (collectively, "Neshaminy Inn") counterclaims (ECF No. 26), and states as follows:

AS TO "COUNTERCLAIMS"

1. Denied as the allegations constitute conclusions of law to which no response is required.
2. Denied as the allegations constitute conclusions of law to which no response is required.
3. Nautilus restates and incorporates by reference the preceding paragraphs and averments in its complaint as if fully set forth herein.
4. Denied. Nautilus denies the allegations of this paragraph, as the allegations constitute conclusions of law to which no response is required. To the extent a response is

required. Nautilus denies it owes any defendant a defense or indemnification in connection with the complaints of G.D. and N.Z.

AFFIRMATIVE DEFENSES

In response to Neshaminy Inn's Counterclaim, and to the extent required under the Federal Rules of Civil Procedure, Nautilus sets forth the following affirmative and other defenses to the Counterclaim:

1. Nautilus incorporates by reference the allegations in Nautilus's Complaint, as though the same were set forth here.
2. Neshaminy Inn has failed to state a claim upon which relief against Nautilus may be granted.
3. Nautilus has not breached any contractual or other duty owed to Neshaminy Inn.
4. Nautilus has no duty to defend Neshaminy Inn in the Underlying Action.
5. Nautilus has no duty to indemnify Neshaminy Inn in the Underlying Action.
6. Any coverage provided by Nautilus is subject to all of the terms, provisions, definitions, conditions, exclusions, and endorsements in the Policy, a document in writing which speaks for itself and is the best evidence of its contents.
7. Any coverage provided by the Policy is subject to the applicable each-occurrence and general-aggregate limits of the policy.
8. Nautilus does not owe Neshaminy Inn a defense or indemnity under the Policy, in connection with the Underlying Action, for the reasons stated in its correspondence to Neshaminy Inn and/or discussed in Nautilus's Complaint in this action.
9. Coverage under the Policy is excluded by one or more of the Policy's exclusions, discussed in Nautilus's Complaint, including the exclusion in the Policy's endorsement titled

“Exclusion – All Assault And Battery”, which precludes all coverage, including a defense, for “bodily injury” or “personal and advertising injury” arising out of any actual or alleged “assault or battery,” or “act or omission in connection with the prevention of such acts, including the alleged failure to provide adequate security. . . .”

10. Coverage for Neshaminy Inn’s claims may further be excluded or limited, depending on facts developed in the Underlying Action, by one or more of the Policy exclusions and limitations, including exclusions for “Expected or Intended Injury”, “Personal and Advertising Injury”, “Knowing Violation of Rights of Another,” and “Criminal Acts,” contained with the Policy’s Commercial General Liability Coverage Form.

11. Coverage for Neshaminy Inn’s claims may further be excluded by the exclusion in the Policy’s endorsement titled “Exclusion – Punitive or Exemplary Damages”, which excludes insurance coverage for punitive or exemplary damages.

12. There is no coverage for Neshaminy Inn’s claims because they do not allege “bodily injury” or “property damage” caused by an “occurrence.”

13. There is no coverage for Neshaminy Inn’s claims because they do not allege “personal and advertising injury.”

14. Providing coverage for the claims against Neshaminy Inn would violate public policy.

WHEREFORE, Nautilus Insurance Company demands judgment against Defendants Motel Management Services, Inc. d/b/a Neshaminy Inn; Mary Etzrodt Trust; NI45, LLC; G.D. and N.Z. as originally requested in Nautilus's complaint.

WHITE AND WILLIAMS LLP

Dated: September 15, 2020

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